174 (2)

No. 10-25

OCT 28 2010

IN THE
SUPREME COURT OF THE UNITED STATES

MARY H. MACON

Petitioner,

v

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Respondent,

On Petition For Writ of Certiorari To The Ohio Supreme Court

PETITION FOR REHEARING ....en banc?

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October Term 2010
No. 10-25

Mary H. Macon, Petitioner
v.
Ohio Department of Job and Family Services

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PETITION FOR REHEARING

Pursuant to SCR 44.1and SCR 44.2, the Petitioner respectfully petitions this Court for rehearing.

The 'delay' factor cost the Petitioner, who was sixty (60) years old at the time of the wrongful termination, five (5) years of effort, time and money to remove the false records from the Ohio court files, to correct by judicial order the Petitioner's personnel file in the Ohio Department of Job & Family Services, to correct the Petitioner's main personnel file in the Ohio Department of Administrative Services and to be reinstated in her position as Bureau Chief, *e.g.*, Data Systems Administrator, with total reimbursement for back pay and all other benefits to which she is entitled.

The settlement agreement purposed by the Ohio Department of Job & Family Services in June, 2006 would have "conditionally" reinstated the Petitioner for a very short period of time and would also have "theoretically" cleared the Petitioner's personnel records.

Realistically, the Petitioner brings to the Court's attention the facts supporting gross mismanagement and unethical actions on the part of the Ohio Department of Job & Family Services, while refuting the maligning accusations of three (3) employees, *e.g.*, the subordinate employee, the Deputy Director of Management Information Systems who wrongfully terminated the Petitioner, and the representative of the Ohio Department of Job & Family Services Director who conducted a bizarre

mock disciplinary meeting and submitted a fictional account to the Agency Director. According to the Agency Director, the erroneous "report" was the determining factor in terminating the Petitioner.

The Petitioner was on the "essential personnel" list of the Ohio Department of Job & Family Services during employment for three (3) years, eleven (11) months. Accordingly, the Petitioner was required to be available twenty-four (24) hours a day, seven (7) days a week.

The Petitioner responded to any and all calls regardless of the time of day or night.

Based on that condition for employment, the Petitioner's time, anywhere, anytime, was "work time," and was not "personal time". Nevertheless, the Petitioner maintains that her job duties were never neglected and minimum work on her job evaluation appeals was done at the office. No reasonable person could believe there would be anything of value contributed by the subordinate employee. All of the three (3) performance evaluation appeals were written by the Petitioner. There were sixty-seven (67) total pages in the third (3rd) and final level performance evaluation appeal submitted by the Petitioner to the Department of Administrative Services September 26, 2005.

The denial of the Petition for Writ of Certiorari in this case was, at a minimum, no less than placing a stamp of approval for the Ohio Department of Job and Family Services actions, e.g., blatant mismanagement, ethics violations and affirming their autonomy in dealing with any challenges to their controlled environment. The Ohio State judicial system that the Petitioner encountered, demonstrated indifference to

the truth the petitioner attempted to include in the court records and, apparently, confident there was no threat of external interference; therefore, no fear of reprisal. Obviously, in a totally controlled environment there is a totally secure outcome.

The fiduciary responsibilities of the Ohio Department of Job & Family Services Agency are inherently mandates that employees be qualified professionals of good character, above reproach and capable of doing the jobs they were employed to perform. There are, in fact, many employees who have those qualifications. Unfortunately, very few of the upper management staff with whom the Petitioner worked, had those qualities, *e.g.*, the Petitioner knew that the Deputy Director and other employees illegally recorded conversations. Recorded conversations can be easily edited, impersonation is equally possible, which allows the truth to be ignored and to be replaced with either convenient distortions or blatant lies.

Employees are required to sign a document entitled "Employees' Code of Responsibility for Security and Confidentially of Data."

Line four (4) was violated by the allegedly abused subordinate employee, the Ohio Department of Job & Family Services Management Information Systems Deputy Director, and the Human Resources 'representative' for the Agency Director, on several different occasions.

None of their offenses were addressed, nor was appropriate action taken, *e.g.* for the offense of knowingly including or causing to be included in any record or report false, inaccurate of misleading

information, there is a requirement for disciplinary action.

The Ohio Department of Job & Family Services Automated Performance Review System report for June, 2005 was altered fraudulently, as clearly proven by documents and the testimony of the Deputy Director, *e.g.*, the date of the Petitioner's performance evaluation was July 15, 2005, not June 26, 2005 as shown on the report below. When the Petitioner brought this to the attention of a staff person in Human Resources, the explanation was simply that "Upper Management" did not want the untimely evaluation to cloud the Deputy Director's record. In short, the 'Agency's' automated report was modified/altered to misrepresent information that would be used in the Deputy Director's performance evaluation. Using a title of "Automated Report" does not mean there is data integrity in ODJFS files as proven by the copy of the report below

The Ohio Department of Job and Family Services demonstrated a total disregard for compliance with the federal Freedom of Information Act.

The petitioner learned she was being investigated by the Human Resources Manager, Keith Nichols, and ODJFS Deputy Director, Galen Bock. Her Section Chiefs were interviewed, and they were given *direct orders* not to tell the Petitioner.

The section chiefs did not disobey their direct orders; however, other employees who were aware of the interrogations did tell the Petitioner.

In an effort to confront and disprove any and all allegations for unspecified infractions, the Petitioner filed an open records request with Human Resources.

The response from Legal was that there were no entries in my personnel file about any investigation or meetings held for that purpose. A copy of the Petitioner's personnel file was mailed to her house and contained nothing unusual. The Petitioner could not challenge what management would not acknowledge; therefore, there was nothing the Petitioner could do to determine and refute/disprove the nature of the allegations which prompted the investigatory meetings.

It would be naïve to consider the Petitioner's civil case handled with such confidence of indemnity and total control by the Ohio State Attorney General's office and judicial officials, as no more than an isolated anomaly.

The Ohio judges and administrative officials the Petitioner encountered during the past five (5) years apparently consider themselves to be in total control, that is:

(1) No concern that the maligned Petitioner could present any viable challenge to the Petitioner's case content in the Ohio court records.

(2) Considered the loss of the Petitioner's position in Ohio to severely diminish the financial resources available for her to pursue recourse reasonably assumed to be available in a higher court.

(3) No reason to be intimidated even if the Petitioner succeeded in filing the case in the United States Supreme Court. They are comfortable assuming there is no risk that the United States Supreme Court would act on information provided by a terminated employee. The allegedly mistreated employee had only worked in the Petitioner's bureau for four (4) months prior to the wrongful termination

of the Petitioner. There was no abuse of any kind toward that employee in any way. In fact, the Petitioner gave the employee a raincoat and continuously, diligently endeavored to help the employee adjust to her new duties and a standard work routine. The employee had reported to her new job assignment in the Petitioner's bureau in July, 2005 when she returned from a medical leave for an obsessive-compulsive disorder. The employee explained to the Petitioner that the mental illness caused her to cut her body. The Deputy Director who terminated the Petitioner assigned that employee to work for the Petitioner. The Petitioner, unlike all of the other Bureau Chiefs, was not involved in the selection of that direct report. The first day the employee reported for work, she told another employee who worked across from her cubicle that she had heard that "they" were trying to get rid of Mary Macon, and that she was worried about her job being at risk when "they" did. As noted above, the employee's position reported directly to the Petitioner.

CONCLUSION

The facts are clear, *e.g.*, it is evident the Ohio officials involved in the Petitioner's case have abused their authority, and the Petitioner's civil case is, at a minimum, worthy of a rehearing.

The Petitioner is a Christian. As a Christian, it is imperative that all options for recourse in this case be utilized.

As Edmund Burke succinctly observed, "The only thing necessary for evil to triumph, is that good

men (and women) do nothing."

Judges can make erroneous decisions, especially when they do not have the real facts before them. The facts, once presented, require truth to prevail.

Justice is not for the benefit of 'some' but is the right of "all."

It is also civic and professional responsibility to take whatever actions are necessary to bring these issues to the attention of the highest Court in the United States. The Petitioner has done so at significant personal cost both in terms of financial expense and of time invested in securing justice afforded by her rights as a United States citizen. The Bill of Rights guarantees citizens the right to the pursuit of happiness, happiness is not equated to the pursuit of seemingly endless legal efforts for vindication and reinstatement.

Respectfully submitted

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CERTIFICATION OF COUNSEL

I hereby certify that the attached Petition for Rehearing is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. I further certify that ths attached Petition for Rehearing is presented in good faith, and is not interposed for purposes of delay.

Frank Yates, Jr.
Counsel for Petitioner